

INDIVIDUAL RULES AND PRACTICES IN CIVIL CASES

Jesse M. Furman, United States District Judge

Chambers

United States District Court
Southern District of New York
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Unless otherwise ordered by Judge Furman, these Individual Practices apply to all civil matters except for civil *pro se* cases (see Individual Rules and Practices in Civil *Pro Se* Cases, available at <http://nysd.uscourts.gov/judge/Furman>).

1. Communications with Chambers

- A. Letters.** Except as otherwise provided below, communications with the Court should be by letter, filed electronically on ECF. All letters should be text-searchable. Letters seeking relief should (if consistent with the S.D.N.Y. Local Rules and the S.D.N.Y. “Electronic Case Filing Rules and Instructions”) be filed on ECF as letter-motions in accordance with Paragraph 3.C below, *not* as ordinary letters. Parties should **not** submit courtesy copies of letters filed on ECF.

Letters to be filed under seal or containing sensitive or confidential information may be e-mailed to the Court (Furman_NYSDChambers@nysd.uscourts.gov) as a text-searchable .pdf attachment with a copy simultaneously delivered to all counsel. Any such e-mail shall state clearly in the subject line: (1) the caption of the case, including the lead party names and docket number; and (2) a brief description of the contents of the letter. Parties shall not include substantive communications in the body of the e-mail; such communications shall be included only in the body of the letter. (The sender of an e-mail will ordinarily receive an auto-reply e-mail appearing to come from the Courtroom Deputy stating that substantive communications in the body of the e-mail will be disregarded. Parties need not, and should not, respond to the auto-reply message.)

Unless otherwise ordered by the Court, letters may not exceed five pages in length. Letters solely between parties or their counsel or otherwise not addressed to the Court may not be filed on ECF or otherwise sent to the Court (except as exhibits to an otherwise properly filed document).

- B. Telephone Calls.** Communications with Chambers, including requests for extensions or adjournments, shall be by letter in accordance with Paragraph 1.A.

For questions that cannot be answered by reference to these Rules or for *urgent* matters requiring immediate attention, call Chambers at (212) 805-0282.

- C. Faxes.** Faxes are *not* permitted except with prior approval of Chambers.
- D. Hand Deliveries.** Hand-delivered mail should be left with the Court Security Officers at the Worth Street entrance of the Daniel Patrick Moynihan United States District Courthouse at 500 Pearl Street, New York, NY 10007 and may not be brought directly to Chambers. Hand deliveries are continuously retrieved from the Worth Street entrance by Courthouse mail staff and then forwarded to Chambers. If the hand-delivered letter is urgent and requires the Court's immediate attention, ask the Court Security Officers to notify Chambers that an urgent package has arrived that needs to be retrieved by Chambers staff immediately.
- E. Requests for Adjournments or Extensions of Time.** All requests for adjournments or extensions of time must be made in writing and filed on ECF as letter-motions, *not* as ordinary letters. (If a request contains sensitive or confidential information, it may be submitted by e-mail and served on opposing counsel in accordance with Paragraph 1.A above.) The letter-motion must state: (1) the original date(s); (2) the number of previous requests for adjournment or extension; (3) whether these previous requests were granted or denied; (4) the reasons for the requested extension; (5) whether the adversary consents and, if not, the reasons given by the adversary for refusing to consent; and (6) the date of the parties' next scheduled appearance before the Court. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge shall be directed to that assigned Magistrate Judge.
- Absent an emergency, any request for extension or adjournment shall be made *at least 48 hours* prior to the deadline or scheduled appearance. Requests for extensions will ordinarily be denied if made after the expiration of the original deadline.
- F. Related Cases.** After an action has been accepted as related to a prior filing, all future court papers and correspondence must contain the docket number of the new filing as well as the docket number of the case to which it is related (e.g., 12 Civ. 1234 [rel. 11 Civ. 4321]).
- G. ECF.** In accordance with the Electronic Case Filing Rules and Instructions, counsel are required to register promptly as ECF filers and to enter an appearance in the case. The pertinent instructions are available on the Court website, at http://www.nysd.uscourts.gov/ecf_filing.php. Counsel are responsible for updating their contact information on ECF, should it change, and they are responsible for checking the docket sheet regularly, regardless of whether they receive an ECF notification of case activity.

- H. Urgent Communications.** As a general matter, materials filed via ECF are reviewed by the Court the business day after they have been filed. If a submission requires more immediate attention, please notify Chambers by telephone after you file the submission via ECF.

2. Conferences

- A. Attendance by Principal Trial Counsel.** The attorney who will serve as principal trial counsel must appear at all conferences with the Court. Any attorney appearing before the Court must enter a notice of appearance.
- B. Initial Case Management Conference.** The Court will generally schedule a Federal Rule of Civil Procedure 16(c) conference no more than two months after the filing of the complaint or notice of removal. The Notice of Initial Pretrial Conference will be docketed on ECF. If the initial pretrial conference has not been scheduled within two months of the filing of the complaint or notice of removal, counsel shall advise the Court by letter filed on ECF.

Plaintiff's counsel (or, in a matter removed from state court, defense counsel) is directed to promptly notify all counsel of the Notice of Initial Pretrial Conference. The Notice will direct the parties, *inter alia*, to submit **on ECF** a joint letter as well as a proposed Civil Case Management Plan and Scheduling Order attached as an exhibit to the joint letter, no later than Thursday of the week prior to the conference date. The parties shall use the form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Furman>).

If (1) counsel agree on a schedule that calls for the close of **all** discovery not more than six (6) months from the date of the Notice of Initial Pretrial Conference; (2) counsel submit the Proposed Case Management Plan and Scheduling Order to the Court no later than thirty (30) days before the initial pretrial conference; **and** (3) the Court signs and docket the Proposed Case Management Plan and Scheduling Order, the initial pretrial conference will be cancelled and the parties need not appear in person. (By contrast, if the Court does not sign and docket the Proposed Case Management Plan and Scheduling Order, the parties must appear at the initial pretrial conference.) If the initial pretrial conference is cancelled, the parties are reminded to check the docketed Case Management Plan for the date and time of the next pretrial conference. The parties are cautioned that the Court will not grant an extension to agreed-upon deadlines except in extraordinary circumstances.

- C. Discovery Disputes.** Parties must follow Local Civil Rule 37.2 with the following modifications. Any party wishing to raise a discovery dispute with the Court must first confer in good faith with the opposing party, in person or by telephone, in an effort to resolve the dispute. If this meet-and-confer process does

not resolve the dispute, the party may file on ECF a letter-motion, no longer than three pages, explaining the nature of the dispute and requesting an informal conference. Such a letter *must* include a representation that the meet-and-confer process occurred and was unsuccessful. If the opposing party wishes to respond to the letter, it must file on ECF a responsive letter, not to exceed three pages, within three business days. Counsel should be prepared to discuss with the Court the matters raised by such letters, as the Court will seek to resolve discovery disputes quickly, by order, conference, or telephone.

3. Motions

A. Letter-Motions. When permitted by the S.D.N.Y. Local Rules and the S.D.N.Y. “Electronic Case Filing Rules and Instructions,” letters seeking relief should be filed on ECF as letter-motions, *not* as ordinary letters. In particular, all requests for adjournments, extensions, and pre-motion conferences (including pre-motion conferences with respect to discovery disputes) should be filed as letter-motions. All letter-motions should be text-searchable. A courtesy copy should **not** be provided to Chambers.

B. Pre-Motion Conferences in Civil Cases. Pre-motion conferences are not required, except for disputes concerning discovery, which are governed by Paragraph 2.D above.

C. Special Rules for Summary Judgment Motions.

- i. Absent good cause, the Court will not ordinarily have summary judgment practice in a non-jury case.
- ii. Any party moving for summary judgment shall provide all other parties with an electronic copy, in Microsoft Word format, of the moving party’s Statement of Material Facts Pursuant to Local Civil Rule 56.1. Opposing parties must reproduce each entry in the moving party’s Rule 56.1 Statement, and set out the opposing party’s response directly beneath it.
- iii. With respect to any deposition that is supplied, whether in whole or in part, in connection with a summary judgment motion, the index to the deposition should be included if it is available.
- iv. The parties should provide the Court with an electronic, text-searchable courtesy copy of any hearing or deposition transcript, or portion thereof, on which the parties rely, if such a copy is available, unless doing so would be unduly burdensome. (Parties should provide these materials on a CD only, not on a DVD or memory stick and not by email.)

- v. Memoranda of law should include sections discussing the relevant background and facts. Parties should not merely incorporate by reference their Local Rule 56.1 Statements or Counterstatements.

- D. Memoranda of Law.** The typeface, margins, and spacing of motion papers must conform to Local Civil Rule 11.1. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. All memoranda of law shall be in 12-point font or larger, double spaced, and text-searchable. Memoranda of 10 pages or more shall contain a table of contents and a table of authorities, neither of which shall count against the page limit. Sur-reply memoranda will not be accepted without prior permission of the Court. All appendices to memoranda of law must be indexed.
- E. Unpublished Cases.** If a party cites to a case not available in an official reporter, it need not provide copies of the case to Chambers if the case is available on Westlaw.
- F. Courtesy Copies.** One courtesy hard copy of all formal motion papers, marked as such, should be submitted to Chambers *by the movant at the time the reply is due*. Courtesy copies should not be submitted to Chambers at the time of filing.
- G. Oral Argument on Motions.** The Court rarely holds oral argument. But parties may request oral argument by letter filed on ECF at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.
- H. Preliminary Injunction Motions.** The Court generally follows the procedure for the conduct of non-jury trials described in Paragraph 5.D below.
- I. Motions to Exclude Testimony of Experts.** Pursuant to Rules 702-705 of the Federal Rules of Evidence and the *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), line of cases, motions to exclude testimony of experts must be made by the deadline for dispositive motions and should not be treated as motions *in limine*.
- J. Default Judgments.** A plaintiff seeking a default judgment must proceed by filing a motion for default judgment on ECF pursuant to Federal Rule of Civil Procedure 55(b)(2) and Local Civil Rule 55.2(b). A plaintiff seeking a default judgment should *not* proceed by order to show cause. The motion must be supported by the following papers:
 - i. an attorney's affidavit or declaration setting forth:

1. the basis for entering a default judgment, including a description of the method and date of service of the summons and complaint;
 2. the procedural history beyond service of the summons and complaint, if any;
 3. whether, if the default is applicable to fewer than all of the defendants, the Court may appropriately order a default judgment on the issue of damages prior to resolution of the entire action;
 4. the proposed damages and the basis for each element of damages, including interest, attorney's fees, and costs; and
 5. legal authority for why an inquest into damages would be unnecessary;
- ii. a proposed default judgment;
 - iii. copies of all the operative pleadings;
 - iv. a copy of the affidavit of service of the summons and complaint; and
 - v. if failure to answer is the basis for the default, a Certificate from the Clerk of Court stating that no answer has been filed.

Judge Furman will review the motion for default judgment and, if appropriate, issue an order setting a date and time for a default judgment hearing. If Judge Furman issues such an order, the plaintiff must then serve on the party against whom default judgment is sought: (1) the motion for default judgment and supporting papers; and (2) Judge Furman's order setting a date and time for the default judgment hearing. The plaintiff must file proof of such service on the docket in the manner and by the date specified in Judge Furman's order setting the default judgment hearing.

K. Proposed Stipulations and Orders. Except as otherwise provided in these Rules and Practices, parties should e-mail all proposed stipulations and orders that they wish the Court to sign to the Orders and Judgments Clerk at judgments@nysd.uscourts.gov in accordance with the ECF Rules & Instructions. Courtesy copies need not be sent to Chambers.

4. Other Pretrial Guidance

A. Applications for Temporary Restraining Orders. A party should confer with his or her adversary before making an application for a temporary restraining order unless the requirements of Fed. R. Civ. P. 65(b) are met. As soon as a party

decides to seek a temporary restraining order, he or she should call Chambers at (212) 805-0282 and state clearly whether (1) he or she has notified the adversary, and whether the adversary consents to temporary injunctive relief; or (2) the requirements of Fed. R. Civ. P. 65(b) are satisfied and no notice is necessary. If a party's adversary has been notified but does not consent to temporary injunctive relief, the party seeking a restraining order must bring the application to the Court at a time mutually agreeable to it and the adversary, so that the Court may have the benefit of advocacy from both sides in deciding whether to grant temporary injunctive relief.

B. Settlement Agreements. Unless the Court orders otherwise, the Court will not retain jurisdiction to enforce confidential settlement agreements. If the parties wish that the Court retain jurisdiction to enforce a settlement agreement, the parties must place the terms of their agreement on the public record. The parties may either provide a copy of the settlement agreement for the Court to endorse or include the terms of their settlement agreement in their stipulation of settlement and dismissal.

C. Bankruptcy Appeals. The parties must comply with the briefing schedule and the format and length specifications set forth in the Federal Rules of Bankruptcy Procedure 8014-8018 unless otherwise ordered by the Court. One courtesy hard copy of the briefs and the bankruptcy record on appeal, marked as such, should be submitted to Chambers *by the appellant at the time the reply is due*.

5. Trial Procedures

A. Joint Pretrial Order. Unless otherwise ordered by the Court, no later than 30 days after the date for the completion of all discovery or, in the event a dispositive motion is filed, no later than 30 days after the Court's ruling on such motion, the parties shall both file on ECF, as a "Joint Pretrial Statement," and submit by e-mail to the Court (Furman_NYSDChambers@nysd.uscourts.gov) a proposed joint pretrial order, which shall include the following:

- i. the full caption of the action;
- ii. the names, law firms, addresses, and telephone and fax numbers of trial counsel;
- iii. a brief statement by plaintiff (or, in a removed case, by defendant) as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;

- iv. a brief summary by each party of the claims and defenses that the party asserts remain to be tried, including citations to any statutes on which the party relies. Such summaries shall also identify all claims and defenses previously asserted that are not to be tried. The summaries should not recite any evidentiary matter;
- v. a statement as to the number of trial days needed and whether the case is to be tried with or without a jury;
- vi. a joint statement summarizing the nature of the case, to be read to potential jurors during jury selection;
- vii. a list of people, places, and institutions that are likely to be mentioned during the course of the trial, to be read to potential jurors during jury selection;
- viii. a statement as to whether all parties have consented to trial by a magistrate judge, without identifying which parties do or do not consent;
- ix. any stipulations or agreed statements of fact or law to which all parties consent;
- x. a list of all trial witnesses, indicating whether such witnesses will testify in person or by deposition, whether such witnesses will require an interpreter (and, if so, which party will pay the costs for the interpreter), and a brief summary of the substance of each witness's testimony;
- xi. a designation by each party of deposition testimony to be offered in its case-in-chief and any counter-designations and objections by any other party. The parties need not designate deposition testimony to be used for impeachment purposes only;
- xii. a list by each party of all exhibits to be offered in its case-in-chief, with a single asterisk indicating exhibits to which no party objects on any ground. If a party objects to an exhibit, the objection should be noted by indicating the Federal Rule of Evidence that is the basis for the objection. If any party believes that the Court should rule on such an objection in advance of trial, that party should include a notation to that effect (e.g., "Advance Ruling Requested") as well. In general, the Court will rule on relevance and authenticity objections at the time of trial;
- xiii. a statement of the damages claimed and any other relief sought, including the manner and method used to calculate any claimed damages and a breakdown of the elements of such claimed damages; and

- xiv. a statement of whether the parties consent to less than a unanimous verdict.

B. Required Pretrial Filings. Each party shall file and serve with the joint pretrial order:

- i. In all cases, motions addressing any evidentiary issues or other matters should be resolved *in limine*. Absent leave of the Court, the parties must file a single memorandum of law, consistent with Paragraph 3.D above, in support of *all* motions *in limine*;
- ii. in all cases where a party believes it would be useful to the Court, a pretrial memorandum of law;
- iii. in all jury cases, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions as specified by Paragraph 5.C below;
- iv. in all non-jury cases, proposed findings of fact and conclusions of law. The proposed findings of fact should be detailed and should include citations to the proffered trial testimony and exhibits, as there may be no opportunity for post-trial submissions. At the time of filing, parties should also submit copies of these documents to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov), both in .pdf format and as a Microsoft Word document;
- v. in all cases, one copy of each documentary exhibit sought to be admitted, pre-marked (that is, with an exhibit sticker) and assembled sequentially in a loose leaf binder (not to exceed 2 1/2 inches in thickness) or in separate manila folders labeled with the exhibit numbers and placed in a suitable container for ready reference;
- vi. in all cases, the parties shall e-mail to the Court (Furman_NYSDChambers@nysd.uscourts.gov) a Microsoft Word document listing all exhibits sought to be admitted. The list shall contain four columns labeled as follows: (1) "Exhibit Number"; (2) "Description" (of the exhibit); (3) "Date Identified"; and (4) "Date Admitted." The parties shall complete the first two columns, but leave the third and fourth columns blank, to be filled in by the Court during trial.

C. Requests To Charge and Proposed *Voir Dires*. In all jury trials, joint requests to charge, joint proposed verdict forms, and joint proposed *voir dire* questions shall be submitted as attachments to the proposed joint pretrial order. Absent good reason, the parties should not include proposed language for standard instructions (about, for example, the role of the Court and the jury, the standard of proof, etc.), as the Court is likely to use its own standard instructions; instead, the parties should include a list of standard instructions that they believe are

appropriate and focus their attention on case-specific requests to charge. At the time of filing, parties should also submit copies of these documents to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov), as Microsoft Word documents. For any request to charge or proposed *voir dire* question on which the parties cannot agree, each party should clearly set forth its proposed charge or question, and briefly state why the Court should use its proposed charge or question, with citations to supporting authority.

D. Additional Submissions in Non-Jury Cases. At the time the joint pretrial order is filed, each party in a non-jury trial shall submit to the Court by email (Furman_NYSDChambers@nysd.uscourts.gov) and serve on opposing counsel, but not file on ECF, the following:

- i. Copies of affidavits constituting the direct testimony of each trial witness, except for the direct testimony of an adverse party, a person whose attendance is compelled by subpoena, or a person for whom the Court has agreed to hear direct testimony live at the trial. The affidavit should be treated as a direct substitute for the witness's live testimony; that is, counsel should be attentive to the Rules of Evidence (e.g., hearsay and the like) and authenticate any exhibits that will be offered through that witness's testimony. Three business days after submission of such affidavits, counsel for each party shall submit a list of all affiants whom he or she intends to cross-examine at the trial. Only those witnesses who will be cross-examined need to appear at trial. The original signed affidavits should be brought to trial to be marked as exhibits, at which time any objections to particular paragraphs of an affidavit can be made; and
- ii. all deposition excerpts that will be offered as substantive evidence, as well as a one-page synopsis of those excerpts for each deposition. Each synopsis shall include page citations to the pertinent pages of the deposition transcripts.

E. Filings in Opposition. Any party may file the following documents within one week after the filing of the pretrial order, but in no event less than three days before the scheduled trial date:

- i. Opposition to any motion *in limine*; and
- ii. Opposition to any legal argument in a pretrial memorandum.

F. Courtesy Copies. Two courtesy hard copies of all documents identified in Paragraphs 5.A, B.i-iv, C, D, and E above should be submitted to Chambers on the date on which they are to be served or filed. Only one set of documentary exhibits is required. Voluminous material may be organized either in binders (not to exceed 2 1/2 inches in thickness) or manila file folders, but in any event, the courtesy copies shall be separately arranged into *two independent sets*.

6. Redactions

- A. Redactions Not Requiring Court Approval.** The parties are referred to the E-Government Act of 2002 and the [Southern District's ECF Privacy Policy](#) ("Privacy Policy") and reminded not to include, unless necessary, the five categories of "sensitive information" in their submissions (i.e., social security numbers [use the last four digits only], names of minor children [use the initials only], dates of birth [use the year only], financial account numbers [use the last four digits only], and home addresses [use only the City and State]). Parties may redact the five categories of "sensitive information" and the six categories of information requiring caution (i.e., personal identifying number, medical records (including information regarding treatment and diagnosis), employment history, individual financial information, proprietary or trade secret information, and information regarding an individual's cooperation with the government), as described in the Privacy Policy, without Court approval.
- B. Redactions Requiring Court Approval.** Except for redactions permitted by Paragraph 6.A, **all redactions require Court approval.** To be approved, redactions must be narrowly tailored to serve whatever purpose justifies them and otherwise consistent with the presumption in favor of public access to judicial documents. *See, e.g., Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents. *See, e.g., In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543 (JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015). The party seeking leave should file the redacted document on ECF. At the same time, the party should (1) file (on ECF, if possible, and otherwise by e-mail) a letter-motion justifying and seeking leave for the redactions; and (2) e-mail to the Court (at Furman_NYSDChambers@nysd.uscourts.gov) both an unredacted copy of the document and a copy of the document highlighting what information has been redacted. If the application for redaction is approved, the Court will file and maintain the unredacted copy of the document under seal.

7. Policy on the Use of Electronic Devices

Attorneys' use of electronic devices (including mobile telephones, personal electronic devices, computers, and printers) within the Courthouse and its environs is governed by the Court's Standing Order M10-468, available at <http://nysd.uscourts.gov/file/forms/standing-order-electronic-devices>. If required by the Standing Order, counsel seeking to bring a device into the Courthouse shall submit a copy of the Electronic Devices General Purpose Form, available at <http://www.nysd.uscourts.gov/file/forms/standing-order-electronic-devices-form>, to the Court by e-mail (Furman_NYSDChambers@nysd.uscourts.gov) at least 24 hours prior to the relevant

trial or hearing. *If permitted by the Standing Order, mobile telephones are permitted inside the Courtroom, but they MUST be kept turned off at all times.* Non-compliance with this rule may result in forfeiture of the device for the remainder of the proceedings.

If you have any questions about these practices, please contact Chambers at (212) 805-0282.